NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT I.O.P. 65.37

RALPH K. SWACKHAMMER Appellant v. CHRISTOPHER J. HAJDUKIEWICZ AND EAST SUBURBAN MEDICAL SUPPLY, INC. Appellee	IN THE SUPERIOR COURT OF PENNSYLVANIA No.8 WDA 2012

Appeal from the Order Entered December 15, 2011
In the Court of Common Pleas of Allegheny County
Civil Division at No(s): G.D. 09-020020

RALPH K. SWACKHAMMER Appellee v. CHRISTOPHER J. HAJDUKIEWICZ AND EAST SUBURBAN MEDICAL SUPPLY, INC. Appellant	IN THE SUPERIOR COURT OF PENNSYLVANIA No.34 WDA 2012

Appeal from the Order Entered December 15, 2011
In the Court of Common Pleas of Allegheny County
Civil Division at No(s): G.D. 09-020020

BEFORE: MUSMANNO, J., WECHT, J., and COLVILLE, J.*

MEMORANDUM BY WECHT, J.: Filed: April 8, 2013

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* Retired Senior Judge assigned to the Superior Court.

Ralph K. Swackhammer ("Appellant") appeals from a December 15, 2011 order denying his post-trial motions.[1] Christopher J. Hajdukiewicz ("Hajdukiewicz") and East Suburban Medical Supply, Inc. (collectively, "Appellees") have filed a cross-appeal from the same order, which also denied their post-trial motions. We affirm.

The trial court summarized the factual and procedural history as follows:

> This action arises out of a motor vehicle accident occurring in Penn Hills, Allegheny County, Pennsylvania on November 24, 2008. At said time, Ralph K. Swackhammer was operating a 2007 Ford F150 when he was rear-ended by a vehicle driven by Christopher Hajdukiewicz, said vehicle being owned by East Suburban Medical Supply, Inc. ["East Suburban"]. At the time of the collision, Hajdukiewicz was operating said motor vehicle within the course and scope of his employment with [East Suburban].
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> The collision caused a 'chain reaction', propelling the Swackhammer vehicle into a third motor vehicle, which was stopped in front of [Appellant's] vehicle. [Appellant] contends that as a direct and proximate result of the collision, he has suffered severe aggravation to a pre-existing asymptomatic degenerative condition in his neck resulting in radiculopathy and radiating pain in [Appellant's] arm, including numbness and tingling in [Appellant's] fingers and thumb, thereby necessitating and causing cervical surgery in the form of a cervical diskectomy and fusion at C5-C6 and C6-C7.

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[1] While Appellant and Appellees purport to appeal from the order denying their post-trial motions, their appeals actually lie from the entry of judgment. ***Hart v. Arnold***, 884 A.2d 316, 325 n.2 (Pa. Super. 2005). Judgment on the verdict was entered on January 26, 2012. When judgment is entered during the pendency of the appeal, it is sufficient to perfect our jurisdiction. ***Id.***

[Appellant] additionally complained of severe aggravation to a pre-existing asymptomatic carpal tunnel syndrome in his right hand causing and necessitating the need for carpal tunnel surgery of his right wrist. [Appellant] further asserts radiculopathy and radiating pain in his neck, shoulder, right upper extremity causing numbness and tingling in the right hand, thumb, index and long fingers.

Further, [Appellant] alleged, *inter alia*, that he suffered an aggravation of his preexisting asymptomatic cervical stenosis and pre-existing asymptomatic carpal tunnel syndrome, as well as depression. [Appellant] complained of severe strains and sprains, injury and damage to bones, joints, muscles, ligaments, tendons, intervertebral discs, nerves and tissues of the cervical area of the neck, back and spine. [Appellant] further asserts that the accident necessitated three (3) surgical procedures, two (2) cervical fusion surgeries and a carpal tunnel release surgery.

This matter was initiated by a Complaint in Civil Action filed on October 28, 2009. [Appellant] filed suit … to recover money damages for personal injuries allegedly sustained in the rear-end collision occurring on November 24, 2008.

This matter was tried before a jury from September 7, 2011 through September 16, 2011. [Appellees] conceded negligence on the part of the operator of the motor-vehicle involved, that [was] driven by [Hajdukiewicz]. At trial, [Appellees] denied that the negligence of Hajdukiewicz caused any of the injuries and damages of which [Appellant] alleged. The trial court directed a verdict on the issue of factual cause in favor of [Appellant]. Despite [Appellees] conceding the issue of negligence and the court removing the issue of factual cause from the jury's consideration on September 16, 2011, the jury returned a verdict, via interrogatories, awarding zero ($0) damages to [Appellant]. Thereafter, the Court, on the record, inquired of both counsel if either or both of them had any Motions and both replied in the negative.

On September 23, 2011, [Appellant] filed a Motion for Post-Trial Relief. In response to said Motion, this Court issued an Order

> dated October 19, 2011, directing the parties to appear for argument on said Motion on December 14, 2011.[2]
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> [After argument, Appellant's] Motion for Post-Trial relief was denied by Order dated December 15, 2011.[1] [Appellant] promptly filed a Notice of Appeal to the Superior Court of Pennsylvania on December 21, 2011. In response, this writer ordered [Appellant] to file a Concise Statement of Matters Complained of on Appeal pursuant to Pa.R.A.P. 1925(b) by Order dated December 28, 2011.
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> > [1] At the argument, the Court advised counsel that Page 854 of the transcript should be changed to reflect the Court's actual words after the verdict was read and the Court would put the changes in an Order to amend the transcript. The Court on December 19, 2011, advised counsel for the parties that it would be entering an Order clarifying the transcription as per a copy of an Order it was enclosing. Neither counsel objected and the Order clarifying the transcript was entered on April 4, 2012.
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> On January 4, 2012, [Appellees] filed a Notice of Appeal to the Superior Court of Pennsylvania. [Appellees were] ordered to file [their] Concise Statement by Court Order dated January 6, 2011. Said statement was timely filed on January 19, 2011, making this matter ripe for review by the Superior Court of Pennsylvania.

Trial Court Opinion ("T.C.O."), 4/9/2012, at 1-4 (parentheticals omitted).

Appellant raises seven issues for our review:

> I. Whether the lower court erred in failing to properly charge the jury regarding damages in accordance with PA SSJI (Civ) 7.50 and current relevant case law where both Appellant's and Appellees' experts agreed that Appellant

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[2] Appellees also filed a motion for post-trial relief in the alternative, requesting that, if a new trial were granted, the issue of factual cause be put to the jury and evidence on any damages be limited to the claim for a cervical strain. This motion was also denied in the December 15, 2011 order. Appellees cross-appealed.

suffered some injury as a result of the 1/24/08 motor vehicle collision?

II. Whether the lower court erred in failing to grant a new trial based on the jury's verdict of no damages being contrary to the court's charge, insufficient, and against the weight of the evidence?

III. Whether the lower court erred in admitting evidence and argument that Appellant did not suffer any injury in the 11/24/08 collision when factual cause was deemed to have been admitted by Appellees and factual cause was not submitted to the jury?

IV. Whether the lower court erred in admitting evidence and argument regarding Appellant's prior 2006 work injury?

V. Whether the lower court erred in admitting evidence and argument regarding Appellant's prior depression?

VI. Whether the lower court erred in admitting evidence and argument regarding Appellant's subsequent June 25, 2010[] motor vehicle collision?

VII. Whether the lower court erred in setting arbitrary time limitations on Appellant's direct and re-direct examination of Appellant's vocational rehabilitation expert and on Appellant's closing argument?

Appellant's Brief at 6-7.

Appellees, in their cross-appeal, raise two additional issues:

[I.] With respect to Appellees' cross-appeal, in the event the Superior Court grants the Appellant a new trial, which should not be granted, whether the trial court committed an error of law in removing the issue of "factual cause" from consideration by the jury.

[II.] In the event the Superior Court grants the Appellant a new trial, which should not be granted, whether the new trial must be limited to only those injuries which were allegedly uncontroverted, *i.e.*, a cervical strain.

Appellee's Brief at 4.

Appellant's first challenge addresses the propriety of the zero damage award. Appellant asserts that the court's instruction on damages was inappropriate.

In the context of jury instructions, we will grant a new trial only if the charge, viewed in its entirety, was "unclear, inadequate, or tended to mislead or confuse the jury." ***McSorely v. Deger***, 905 A.2d 524, 532 (Pa. Super. 2006). The trial judge has broad discretion in choice of language so long as the charge conveys the appropriate law. ***Id.*** Moreover, we will not reverse a trial court for "isolated inaccuracies" in the jury charge. ***Butler v. Kiwi, S.A.***, 604 A.2d 270, 273 (Pa. Super. 1992).

The trial court instructed the jury that it needed only to decide what damages Appellant was entitled to receive. Notes of Testimony ("N.T."), 9/8-16/2011, at 824. The court gave the standard instruction on burden of proof and preponderance of the evidence. N.T. at 924-25. The trial court instructed the jury on damages as follows:

> If you find plaintiff has proven damages by a preponderance of the evidence, then you must find an amount of money damages you believe will fairly and adequately compensate the plaintiff for all the physical and financial injury, if any, he has sustained as a result of this occurrence.
>
> * * *
>
> I remind you that the defendant can only be held responsible for only those damages that were proven by a preponderance of the evidence.
>
> The parties agree that the defendant was negligent, and medical experts agree that the negligence caused some injury to the

> plaintiff. You must therefore make at least some award for those damages that have been proven.
>
> The parties disagree, however, on the extent of the plaintiff's injuries that the defendant caused. Therefore, you must decide the extent of the injuries the defendant caused and return a fair and just verdict in accordance with the law on damages that I will discuss in greater detail – of which I have discussed with you. I am not suggesting any amount that you should award to the plaintiff. That amount, whatever it is, is in your sole discretion.

N.T. at 833-34, 841-42.

We must resolve whether the trial court was required to instruct the jury that damages must be awarded as Appellant contends or whether the court's instruction that damages must be proven was appropriate. If both sides' experts agree that an accident caused injury, then a jury may not find that there were no injuries. ***Andrews v. Jackson***, 800 A.2d 959, 960 (Pa. Super. 2002). However, when that agreement by the experts that injuries occurred is premised solely upon the plaintiff's subjective complaints, the injuries cannot be considered uncontroverted. That is because the jury is free to disbelieve the plaintiff's subjective complaints. ***VanKirk v. O'Toole***, 857 A.2d 183, 185-86 (Pa. Super. 2004). The existence of pain involves a question of credibility for the jury to determine. ***Lombardo v. Leon***, 828 A.2d 372, 375 (Pa. Super. 2003). Further, the jury can determine that there were injuries, but find that the injuries were not sufficient to be compensable. ***VanKirk***, 857 A.2d at 185-86; ***Lombardo***, 828 A.2d 375 (holding that when an injury is only a "transient rub of life," jury may find it not compensable); ***Andrews***, 800 A.2d at 964. Therefore, if the fact of

compensable injury was disputed, the jury was free to determine whether Appellant was injured at all. If some injury were conceded, but only based upon subjective complaints, the jury is free to judge the credibility of those complaints and award no damages. If the injuries were uncontroverted, the jury remained free to determine whether the injuries were too minor to be compensable. Any of these scenarios would support a zero verdict.

Moreover, this Court has approved the inclusion of the language Appellant complains of when the injuries are not uncontroverted, because it allows the jury to decide whether subjective injuries exist, and whether they are compensable. ***VanKirk***, 857 A.2d at 187. To decide whether the jury instruction was an accurate reflection of the law, we must determine whether Appellant proved that he was injured and whether those injuries were uncontroverted. For that, we must examine the experts' testimony.[3]

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[3] We note that the certified record did not include the transcripts of the testimony of Appellees' experts. While this testimony was provided in the reproduced record, evidence that is not in the certified record will not be considered on appeal. ***Commonwealth v. Preston***, 904 A.2d 1, 6-7 (Pa. Super. 2006). When the certified record is inadequate, there is no basis to afford relief. ***Id.*** at 7. It is the appellant's responsibility to ensure that a complete record is before this Court. Issues that cannot be resolved without the missing transcripts will be found waived. ***Id.*** We remind the parties that "it is not incumbent upon this Court to expend time, effort and manpower scouting around judicial chambers or the various prothonotaries' offices of the courts of common pleas for the purpose of unearthing transcripts … that well may have been presented to the trial court but never were formally introduced and made part of the certified record." ***Id.*** at 7-8. We may, and in this case, did, make an informal inquiry to determine whether the missing transcripts could be found. ***Id.*** at 8. We could have remanded the case for the trial court "to determine why the necessary

(Footnote Continued Next Page)

Appellant argues that, because the trial court's instruction on damages deviated from the suggested instruction on uncontroverted injuries, the jury was misled by the instruction. Appellant contends that the change in language materially altered the meaning of the instruction such that it no longer accurately represented Pennsylvania law. Because negligence was admitted and there was a directed verdict on causation, Appellant maintains that the jury was not permitted to return a zero verdict on damages. Appellant's Brief at 19-24.

Appellees counter that the trial court is not required to follow the suggested standard jury instructions. In Appellees' view, the instruction given by the trial court followed the law because the jury was free to award the damages it felt appropriate based upon the injuries that Appellant was able to prove. Appellees argue that the testimony was such that it called into doubt the extent and existence of Appellant's injuries, and the jury was free to evaluate the credibility of those claims based upon the evidence. Appellees' Brief at 26-42.

(Footnote Continued) ———————————

documentation was omitted." ***Id.*** In that case, if the omission was not due to an "extraordinary breakdown in the judicial process," the issue would be found waived. ***Id.*** Based upon our informal inquiry, counsel for one of the parties docketed the missing transcripts and a supplemental certified record was transmitted to this Court. Because we now have the materials necessary to review the issues and the trial court did not make findings on whether the omission was due to attorney error or judicial breakdown, we decline to find the issues waived.

The trial court believed its instruction to be an adequate representation of the law, given that the injuries were not uncontested. The trial court found that Appellees denied that any injury occurred as a result of the accident. T.C.O. at 12.

As noted, the resolution of this challenge rests on the expert testimony. Four medical experts testified at trial: Vincent Silvaggio, M.D., and Brian Cicuto, D.O., for Appellant; and Michael Spearman, M.D., and Howard Senter, M.D., for Appellees.[4] In order for Appellant to prevail, we must find that the injuries were not uncontroverted. Thus, we focus upon the testimony of Appellees' experts to determine whether and to what extent these experts disputed Appellant's injuries.

Doctor Spearman, a neuroradiologist, testified that Appellant's 2006 MRI showed a degenerative process in the cervical spine that was chronic in nature. Spearman Deposition Transcript ("D.T."), 8/31/2011, at 5, 14-15. After reviewing Appellant's post-accident MRI, Dr. Spearman saw nothing beyond the continuing degenerative condition, including no sign of soft tissue or traumatic injury. D.T., 8/31/2011, at 16-17. Dr. Spearman testified that there was no objective, radiographic evidence of injury or aggravation of a pre-existing condition from the 2008 accident. D.T., 8/31/2011, at 17-18. Dr. Spearman admitted that one could have an injury

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[4] The testimony of Doctors Silvaggio, Spearman, and Senter was presented via videotaped deposition.

that would not appear in an MRI. D.T., 8/31/2011, at 30. On cross-examination, Dr. Spearman was questioned at length about possible causes of pain, symptoms of cervical sprains and whether certain injuries could be seen on an MRI. D.T., 8/31/2011, at 35-41. All of those questions were premised upon the assumption that Appellant had an injury. The proof of that injury was Appellant's own reports of pain.

Dr. Senter, a neurosurgeon, corroborated Dr. Spearman's testimony that the 2006 MRI showed degenerative changes. Senter D.T., 8/30/2011, at 5, 37-38. Dr. Senter testified that Appellant's complaints at the hospital after the accident were the same as the complaints he made prior in 2006. D.T., 8/30/2011, at 44-45. Dr. Senter confirmed that the 2008 MRI did not show signs of traumatic injury and showed only the pre-existing degenerative changes. D.T., 8/30/2011, at 47. Dr. Senter opined that the accident did not lead to any of Appellant's surgeries; instead, the surgeries were performed as a result of his pre-existing conditions. D.T., 8/30/2011, at 48, 50, 57, 62-64.

Addressing Appellant's allegation that the accident led to his carpal tunnel surgery, Dr. Senter denied that carpal tunnel syndrome could be caused by a traumatic event. D.T., 8/30/2011, at 39-40, 48. Instead, Dr. Senter opined that Appellant had carpal tunnel symptoms prior to the accident. D.T., 8/30/2011, at 41.

On cross-examination, Dr. Senter reiterated that the only evidence of an injury was Appellant's subjective pain complaints. D.T., 8/30/2011, at

124. Dr. Senter did not disagree with the emergency room diagnosis immediately after the accident of cervical sprain, but stated that the diagnosis was based solely upon Appellant's subjective reports. D.T., 8/30/2011, at 164. In conclusion, Dr. Senter testified that there was no objective evidence that Appellant suffered an injury or aggravation of a pre-existing condition from the 2008 accident, nor was there any reason why Appellant could not work. D.T., 8/30/2011, at 60-62.

Neither defense expert found objective evidence of an injury stemming from the 2008 accident. While Dr. Senter conceded that a diagnosis of cervical sprain was consistent with Appellant's symptoms, he stressed that the diagnosis was based solely upon Appellant's subjective complaints of pain. Because the expert's agreement on the cervical sprain was based upon subjective complaints, the presence of injuries caused by the accident cannot be considered uncontroverted. ***See VanKirk***, *supra*. Because the injuries were not uncontroverted, the trial court did not err in refusing to give the standard instruction on uncontroverted injuries. The court's instruction was appropriate. Consequently, Appellant is not entitled to relief on this issue.

Appellant next claims the verdict was against the weight of the evidence and that he was entitled to a new trial. The request for a new trial on a weight of the evidence claim is reviewed as follows:

> When a trial court denies a motion for a new trial, our standard of review is to decide whether the trial court committed an error of law which controlled the outcome of the case or committed an

> abuse of discretion. ***Cangemi v. Cone***, 774 A.2d 1262, 1265 (Pa. Super. 2001) (citations omitted). A new trial will be granted on the grounds that the verdict is against the weight of the evidence only where the verdict is so contrary to the evidence it shocks one's sense of justice. ***Id.***, 774 A.2d at 1265. A new trial will not be granted on the ground that the verdict was against the weight of the evidence simply because the evidence was conflicting and the fact-finder could have decided in favor of either party. ***S.N.T. Industries, Inc. v. Geanopulos***, 363 Pa. Super. 97, 525 A.2d 736, 740 (1987).

Kraner v. Kraner, 841 A.2d 141, 144-45 (Pa. Super. 2004).

We will not find a jury's verdict to be against the weight of the evidence when the experts disagree about whether an injury occurred. ***Kraner***, 841 A.2d at 145. The jury is free to believe whichever expert it finds most credible; when the injuries are disputed, the jury's verdict will stand. When the experts agree that injury occurred, a jury still may render a zero verdict without that verdict being against the weight of the evidence, provided that the jury determined the injuries to be too inconsequential or incidental. ***Id.*** Again, resolution of this issue depends upon the content of the experts' testimony.

Appellant argues that the verdict was against the weight of the evidence. Appellant contends that Appellees' expert testified that Appellant was injured as a result of the accident and that his symptoms persisted for a year despite treatment. Because the injuries were more than a "transient rub of life," Appellant asserts the jury could not award zero damages. Appellant argues that the jury was required by the evidence to award

damages, including damages for past medical expenses based upon the itemized list of medical charges. Appellant's Brief at 25-31.

Appellees cite case law that supports the conclusion that, even when some injuries are conceded, a jury is not required to award damages because the jury still decides credibility. Credibility is particularly important when the injuries are based upon subjective complaints. Appellees argue that, because no expert introduced objective evidence of injury and the diagnosis was based upon subjective complaints of pain, the jury was free to disbelieve Appellant's claims and award no damages. Appellees' Brief at 13-26.

In denying a new trial, the trial court found that the medical experts testified that there was no objective evidence of injury. The trial court also highlighted testimony that Appellant neither struck any part of his body against the interior of the car nor suffered any visible injury (*i.e.* broken bones, cuts, scrapes or bruises). Based upon the evidence at trial, the court found that the verdict was not against the weight of the evidence, and denied the request for a new trial. T.C.O. at 7, 10-11.

This analysis of the defense's expert testimony also suffices to rebut Appellant's contention that the trial court erred in denying a new trial because the jury's award was contrary to the weight of the evidence. The jury was free to make a credibility determination with regard to Appellant's subjective complaints. ***See Lombardo***, *supra*. If it did not find those complaints credible, the jury could award zero damages. A new trial will not

be granted when the jury could have decided in favor of either party based upon its credibility determination. ***See Kraner***, *supra*. Accordingly, we find that this issue is without merit.

Appellant's next several issues question whether the trial court properly admitted or allowed certain evidence.

> Our standard of review for rulings on the admission of evidence is well settled. It has long been clear that questions regarding the admissibility or exclusion of evidence are within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. An abuse of discretion requires prejudice, bias, ill-will, or misapplication of law. In assessing the propriety of the trial court's actions, a fundamental consideration in determining the admissibility of evidence is its relevance. Evidence is relevant if it tends to make a fact at issue more or less probable.

Spino v. John S. Tilley Ladder Co., 671 A.2d 726, 734 (Pa. Super. 1996) (citations and internal quotation marks omitted). All Appellant's evidentiary claims implicate, to varying extents, the relevancy of the evidence.

> For evidence to be admissible, it must be competent and relevant. Evidence is competent if it is material to the issue to be determined at trial. Evidence is relevant if it tends to prove or disprove a material fact. Relevant evidence is admissible if its probative value outweighs its prejudicial impact.

Conroy v. Rosenwald, 940 A.2d 409, 417 (Pa. Super. 2007); ***see also*** Pa.R.E. 402, 403.

In his third issue, Appellant contends that the trial court should not have allowed the introduction of evidence that he was not injured in the accident. Appellant argues that the trial court should have granted his

motion *in limine* to determine factual cause because the evidence was available to direct a verdict on the issue prior to trial.

While Appellant asserts that the trial court erred, he presents no statutory or decisional authority to support his argument. When no legal citation is provided, an argument is waived. ***Rettger v. UPMC Shadyside***, 991 A.2d 915, 932 (Pa. Super. 2010); Pa.R.A.P. 2119(a).

Appellant next argues that the trial court should have precluded evidence regarding a 2006 work-place injury. Appellant asserts that expert testimony was required for Appellees to prove that the 2006 incident caused a pre-existing injury, and to establish a link between the 2006 injuries and the alleged injuries caused by the 2008 accident. Appellant maintains that Appellees did not provide such testimony. Instead, Appellees made the 2006 injury a focus of their cross-examination of Appellant and their closing argument. Appellant admits that he had a pre-existing condition, cervical stenosis, which was discovered while in treatment for the 2006 injury, but that the injury itself was not a pre-existing condition nor relevant to the injuries stemming from the car accident. Appellant's Brief at 34-38.

Appellees contend that the 2006 injury was relevant because Appellant complained of the same symptoms after that injury as he did in connection with the accident at issue. Because there was contradictory testimony as to whether those 2006 complaints were resolved prior to the car accident, the testimony was relevant. Appellees further argue that, because Appellant's claims were premised upon aggravation of pre-existing conditions, any prior

injuries were relevant and important for the jury to know in evaluating Appellant's credibility. Appellees' Brief at 45-48.

The trial court concluded that Appellant's 2006 injuries were relevant because of the similarity of the symptoms and because Appellant's claims were based upon the aggravation of pre-existing conditions. The trial court found that the 2006 injuries were relevant because the jury could not evaluate the aggravation claim in isolation from the underlying injury. T.C.O. at 15.

Testimony regarding a prior accident is not admissible unless the injuries from that prior accident can be connected to those claimed in the present suit. ***Papa v. Pittsburgh Penn-Center Corp.***, 218 A.2d 783, 789 (Pa. 1966). Here, there was a connection between the symptoms of which Appellant complained following both the 2006 injury and the 2008 accident. Appellant testified that he was still symptomatic when he stopped receiving treatment for the 2006 injury, and could not recall when his symptoms resolved, although he believed that they resolved soon after that injury. N.T., 9/8-16/2011, at 326-28. Appellant also testified that he had no new symptoms after the 2008 accident, but that "there was a lot more pain." N.T., 9/8-16/2011, at 354. Dr. Silvaggio, Appellant's expert, conceded that there were no medical records that showed that Appellant's symptoms from 2006 had completely resolved before the 2008 accident. Silvaggio D.T.,

8/23/2011, at 190-92. Additionally, Appellant first introduced the 2006 injury in his expert's medical testimony.[5] D.T., 8/19/2011, at 36.

For evidence of the prior accident to be admissible, a connection must be shown between the current injuries and those from the prior accident. ***See Papa***, *supra*. Based upon the similarity of the symptoms, the lack of objective proof that the symptoms were resolved prior to the 2008 accident, and Dr. Silvaggio's testimony concerning the 2006 injury, the trial court did not abuse its discretion in denying the motion to preclude evidence regarding the 2006 injury.

Appellant's next argument is similar: that the trial court erred in allowing evidence of his prior diagnosis of, and treatment for, depression. Appellant argues that he suffered from depression prior to the accident, but that it was related to his then-ongoing divorce. Appellant contends that his depression was resolved and was unrelated to the depression that he suffered after the 2008 accident. As there was no causal link between the two periods of depression, Appellant believes it was error to allow introduction of evidence about the prior depression. Appellant's Brief at 28-40.

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[5] During argument on this motion *in limine*, Appellees noted that Appellant's expert raised the 2006 injury and Appellant did not object to Appellees' cross-examination on the issue. N.T., 9/8-16/2011, at 7. Appellant explained that Dr. Silvaggio's deposition was taken first, and the 2006 injury was raised in anticipation of the need to rebut testimony from Appellees' expert, Dr. Senter. N.T. at 7-8.

Appellees claim that the evidence was relevant because Appellant's prior depression militated against his claims for damages. Appellees also contend that the evidence was relevant because Appellant was seeking damages for future economic loss. A history of depression might impact Appellant's health, which is at issue in determinations of life expectancy. Depression is related to pain, which could impact damages for pain and suffering. Appellees' Brief at 50-52.

The trial court found that the information was relevant because Appellant was seeking damages for anxiety, mental anguish, and depression stemming from the accident. Appellant's health and physical condition prior to the accident were appropriate considerations when determining damages for pain and suffering. Additionally, when there is a claim for permanent injury or for future economic damages, and life expectancy is at issue, the jury should consider health and other factors that may affect life expectancy. T.C.O. at 15-16.

The standard jury instruction for past and future noneconomic damages states that, in considering the claims, the jury must consider, among other factors, "the health and physical condition of the plaintiff prior to the injuries." S.S.J.I. 7.130 (2011). In determining life expectancy for injuries that extend beyond the time of trial, the jury is to consider factors including "the plaintiff's health prior to the accident, [his] [her] manner of living, [his] [her] personal habits, and other factors that may have affected the duration of [his] [her] life." S.S.J.I. 7.240 (2011). As the trial court

noted, Appellant's history of depression was relevant to these considerations. We find no abuse of discretion in the trial court's decision to admit testimony concerning Appellant's prior depression.

Appellant next challenges the trial court's decision to allow testimony regarding a subsequent June 2010 accident in which Appellant was involved. Appellant argues that there was no testimony that casually connected the June 2010 accident with the injuries from the 2008 accident that he complained of at trial. Appellant contends that this testimony served only to confuse and prejudice the jury. Appellant's Brief at 40-44.

Appellees contend that evidence about the June 2010 accident was relevant. If Appellant experienced pain and suffering from the 2010 accident, it was important for the jury to evaluate that information within the context of considering damages for pain and suffering from the 2008 accident. Appellees maintain that the same is true for Appellant's claim for future economic damages. Appellees' Brief at 55-56.

The trial court found the 2010 accident to be relevant because the injuries Appellant sustained in that accident were similar, and caused pain similar to that ensuing from the 2008 accident. Because Appellant bore the burden of proving compensable injuries that were caused by the 2008 accident, the trial court held that the jury should be informed of Appellant's 2010 injuries. T.C.O. at 17-18.

When there are claims for pain and suffering and lifetime impairment, a subsequent accident or injury may be relevant. ***McGuire v. Hamler Coal***

Min. Co., 49 A.2d 396 (Pa. 1946). In ***McGuire***, the plaintiff was injured in an accident caused by the defendant. He was later re-injured, through no fault of the defendant, in the same area of his body, causing similar symptoms. ***Id.*** at 397. Our Supreme Court held that the plaintiff must differentiate the injuries sustained in each accident so that the jury can determine which injuries the defendant caused and the appropriate compensation for those injuries. ***Id.***

Here, Appellant had pain in his neck and arms after the 2008 accident. N.T., 9/8-16/2011, at 203, 215. Appellant also suffered neck pain after the 2010 accident. N.T., 9/8-16/2011, at 278. Additionally, Appellant testified regarding his current condition, including his current levels of pain. N.T., 9/8-16/2011, at 286-90. For the jury properly to evaluate what pain and suffering was caused by the 2008 accident and what was caused by the 2010 accident, the jury needed to hear testimony about both. The 2010 accident was relevant, and the trial court did not abuse its discretion in admitting that evidence.

Appellant's final issue asserts that the trial court erred in setting time limits on examination of a vocational expert and on closing argument. Appellant contends that the trial court limited his direct examination of his vocational expert to one hour, despite counsel's statement that direct examination would take approximately one hour and fifteen minutes. Appellant concedes that this conversation was not on the record. Appellant similarly asserts that the trial court limited closing arguments to fifty

minutes notwithstanding that counsel informed the court that counsel needed an hour and fifteen minutes for closing. Appellant argues that there was no rational basis to limit direct examination or closing arguments, and that counsel was prevented from effectively presenting a witness and argument. Appellant's Brief at 44-46.

Appellant presents no statutory or decisional authority to support his argument. When no legal citation is provided, an argument is waived. ***Rettger***, 991 A.2d at 932; Pa.R.A.P. 2119(a). Accordingly, Appellant's last claim is waived.

Appellees raise two issues in their cross-appeal. Both are raised in the alternative and apply only if we were to grant new trial. As we have not granted a new trial, we need not reach these issues.

Order affirmed. Jurisdiction relinquished.